

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DR. GERALD R. FINKEL, as Chairman of  
the Joint Industry Board of the  
Electrical Industry,

**MEMORANDUM & ORDER**  
23-CV-4868 (EK) (JAM)

Petitioner,

-against-

FIREQUENCH, INC.,

Respondent.

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ERIC KOMITEE, United States District Judge:

The Court has received Magistrate Judge Marutollo's Report and Recommendation (R&R) dated January 29, 2024. ECF No. 13. Judge Marutollo recommends that I confirm the arbitration award rendered pursuant to the terms of a collective bargaining agreement between the Petitioner, Dr. Finkel, and the Respondent, Firequench, Inc., (the "Award") and grant Finkel's motion in part. Judge Marutollo further recommends that I order Firequench to pay Finkel the total remaining award amount of \$40,506.07, consisting of: (1) reported but unpaid contributions in the amount of \$11,603.44; (2) interest in the amount of \$3,701.65; (3) additional shortages and underpayments in the amount of \$3,051.30; (4) liquidated damages in the amount of \$16,399.68; (5) legal fees and costs in the amount of \$4,350.00; and (6) the arbitrator's fee in the amount of \$1,400.00.

Finally, Judge Marutollo recommends that Finkel be awarded post-judgment interest in accordance with 28 U.S.C. § 1961 and that Firequench be ordered to pay Finkel \$742.00 for the attorney's fees and costs it incurred in connection with this proceeding.

Respondent Firequench has not filed any objections to this R&R, and the time to do so has expired. Finkel filed a timely objection only to the portion of Judge Martuollo's R&R that recommends awarding \$402 in costs, rather than the \$477 requested. ECF No. 15. Finkel argues that the additional \$75 service cost should be awarded because, although he did not submit documentation of this cost in his initial motion, he has since obtained, and attached as exhibits, a service invoice and a history bill demonstrating payment of a \$90 service fee. ECF Nos. 15-1, 15-2. (Finkel's objection only requests \$75, however, as this was the amount estimated and requested in the initial motion.)

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). The district court reviews *de novo* those portions of an R&R to which a party has specifically objected. *Id.*; Fed. R. Civ. P. 72(b)(3); see also *Kruger v. Virgin Atl. Airways, Ltd.*, 976 F. Supp. 2d 290, 296 (E.D.N.Y. 2013) ("A proper objection is one that identifies the specific portions of the R&R that the objector asserts are

erroneous and provides a basis for this assertion."), *aff'd*, 578 F. App'x 51 (2d Cir. 2014). In resolving objections, a "district judge may . . . receive further evidence." Fed. R. Civ. P. 72(b)(3).

As Judge Marutollo noted, a party is entitled to an award of costs when the applicant has "adequately document[ed] and itemize[ed] the costs." *Incredible Foods Grp., LLC v. Unifoods, S.A. De C.V.*, No. 14-CV-5207 (KAM) (JO), 2016 WL 4179943, at \*3 (E.D.N.Y. Aug. 5, 2016). An invoice documenting a service fee provides sufficient evidence of such cost. See *Loc. 363, United Elec. Workers of Am., Int'l Union of Journeymen & Allied Trades v. Laser Lite Elec., Inc.*, No. 17-CV-0267, 2017 WL 9939041, at \*6 (E.D.N.Y. Nov. 9, 2017). Because the Petitioner has now adduced evidence supporting the request for an additional \$75 in costs associated with this case, I find that this cost should appropriately be included in the award amount.

I review the remaining, unobjected to portions of the R&R for clear error, see Fed. R. Civ. P. 72(b) advisory committee's note to 1983 addition; accord *State Farm Mut. Auto. Ins. Co. v. Grafman*, 968 F. Supp. 2d 480, 481 (E.D.N.Y. 2013), and find none.

Therefore, I order that the award of costs incurred in pursuing this action be increased by \$75 and otherwise adopt the

R&R in full. Petitioner's motion is granted in part, and the Award is confirmed.

SO ORDERED.

/s/ Eric Komitee  
ERIC KOMITEE  
United States District Judge

Dated: September 20, 2024  
Brooklyn, New York